

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
GREENVILLE DIVISION

Equal Employment Opportunity  
Commission,

Plaintiff,

vs.

Cromer Food Services, Inc.,

Defendant.

C.A. No. 6:08-3249-HMH-BHH

**OPINION AND ORDER**

This matter is before the court on Defendant's motion for attorney fees pursuant to Rule 54(d)(2) of the Federal Rules of Civil Procedure and 42 U.S.C. § 2000e-5(k). Plaintiff filed a complaint alleging causes of action for hostile work environment and retaliation in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, et seq. On February 26, 2010, the court granted Defendant's motion for summary judgment. Defendant now seeks to recover attorney's fees as the prevailing party in this action.

"In any [Title VII] action . . . the court, in its discretion, may allow the prevailing party, . . . , a reasonable attorney's fee." 42 U.S.C. § 2000e-5(k). "[A] district court may in its discretion award attorney's fees to a prevailing defendant in a Title VII case upon a finding that the plaintiff's action was frivolous, unreasonable, or without foundation, even though not brought in subjective bad faith." Christiansburg Garment Co. v. Equal Employment Opportunity Comm'n, 434 U.S. 412, 421 (1978). "In applying these criteria, it is important that a district court resist the understandable temptation to engage in *post hoc* reasoning by concluding that, because a plaintiff did not ultimately prevail, his action must have been unreasonable or without foundation." Id. at 421-22.

Defendant argues that “the EEOC’s actions in pursuing this lawsuit were unreasonable [and] contrary to procedure outlined by Title VII which encourages the resolution of these disputes outside of court during the investigation and conciliation process.” (Def. Mot. Atty. Fees 5.) Additionally, Defendants allege that the EEOC’s Title VII claims were “frivolous” and “without foundation.” (Id. at 2.) The court does not agree.

While summary judgment was granted in Defendant’s favor, Plaintiff’s position was not frivolous. Defendant also has not provided any evidence to suggest bad faith on the part of Plaintiff. The court finds that Plaintiff’s Title VII claims were not unreasonable, frivolous, or without foundation. Accordingly, Defendant’s motion for attorney fees is denied.

It is therefore

**ORDERED** that Defendant’s motion for attorney fees, docket number 87, is denied.

**IT IS SO ORDERED.**

s/Henry M. Herlong, Jr.  
Senior United States District Judge

Greenville, South Carolina  
April 15, 2010